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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LAURENT HERRMANN and DIDIER CONTE

Appeal 2007-3344
Application 09/872,994
Technology Center 2100

Decided: February 1, 2008

Before: JAMES D. THOMAS, ALLEN R. MACDONALD,
and THU A. DANG, *Administrative Patent Judges.*

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL

I. STATEMENT OF CASE

Appellants appeal the Examiner's final rejection of claims 1-8 under 35 U.S.C. § 134. We have jurisdiction under 35 U.S.C. § 6(b).

A. INVENTION

According to Appellants, the invention is an interactive processing system including a user terminal intended to be connected to a network such as the Internet network, means for identifying packets received from the network and forwarding them to the terminal, and means for managing and

controlling the network resources and handling the delivery monitoring service of the packets on the network, according to the resources (Spec., Abstract).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1. A processing system comprising at least a user terminal in a user location, a server coupled to said user terminal, a communication network, and an interface device located between said network and said user terminal, said interface device comprising:

(a) means for formatting incoming data received from said terminal into packets identified by headers and that can be sent towards said network;

(b) means for identifying packets received from the network and forwarding them to the terminal;

(c) means for managing and controlling and output bitrate and handling a delivery monitoring service of said packets on the network according to said output bitrate, comprising:

a receiving stage for receiving incoming packets from the network;

an analysis stage for analyzing the incoming packets;

a statistics processing stage for computing statistics based on analysis provided by the analysis stage;

a formatting stage for creating packets to be sent toward said network;
and

an output bitrate adjusting stage for selectively adjusting the output bitrate based on the computed statistics, wherein the output bitrate is adjusted by providing a plurality of bitstreams encoded at different bitrates and selecting one of the plurality of bitstreams based on the computed statistics.

C. REJECTIONS

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Grabelsky	US 6,678,250 B1	Jan. 13, 2004.
Ito	US 6,052,734	Apr. 18, 2000.

Claims 1-8 stand rejected under 35 U.S.C. § 103(a) over the teachings of Grabelsky and Ito.

II. ISSUES

The issue is whether Appellants have shown that the Examiner erred in finding that claims 1-8 are unpatentable under 35 U.S.C. § 103(a) over the teachings of Grabelsky and Ito.

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Grabelsky

1. Grabelsky discloses a network edge device capable of collecting network connection statistics to determine the packet delivery performance of individual connections, as well as the overall quality of network performance. The network performance statistics collected from network connections across the network can be used to monitor the overall performance of the underlying network, highlighting trouble spots (col. 2, ll. 11-26).

2. Transport control protocol, RTCP, allows session members to monitor and exchange information (col. 5, ll. 36-41). Each gateway **20** interfacing the user with the network includes a database **14** to collect and maintain network performance information generated by RTCP (col. 5, ll. 54-57; Fig. 1).

Ito

3. Ito teaches a system for dynamically controlling an amount of data to be distributed to each receiving terminal in response to a congestion of each receiving terminal (col. 2, ll. 20-29).
4. A congestion detecting portion **25** used as the environment detecting means receives the RTCP packet and detects the congestion, in accordance with the rate of packet loss or the like (col. 4, ll. 37-44). Encoding rate determining portion **233** sets a high encoding rate for communication data to be distributed to the receiving terminal in which the congestion is not caused, and sets a low encoding rate for communication data to be distributed to the receiving terminal in which the serious congestion is caused (col. 4, ll. 45-60).
5. A priority determining portion **281** determines a priority of each packet, and packet discarding portion reduces the amount of data by discarding a low-priority packet in response to the congestion detected by the congestion detecting portion **25** (col. 5, ll. 58-67).
6. According to the invention of Ito, since communication data encoded at the low encoding rate is distributed to the receiving terminal in which congestion is caused, the congestion can be canceled. Further,

since the less important packet is discarded and the communication data having a small amount of data is then distributed to the receiving terminal in which the congestion is caused, the congestion is canceled (col. 6, ll. 35-50).

PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

The *claims* measure the invention. *See SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). "[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)). Our reviewing court has repeatedly warned against confining the claims to specific embodiments described in the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc). During prosecution before the USPTO, claims are to be given their broadest reasonable interpretation, and the scope of a claim cannot be narrowed by reading disclosed limitations into the claim.

See In re Morris, 127 F.3d 1048, 1053-54 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989); *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969).

"[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted). "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Phillips v. AWH Corp.*, 415 F.3d at 1313 (Fed. Cir. 2005) (en banc).

In the absence of separate arguments with respect to claims subject to the same rejection, those claims stand or fall with the claim for which an argument was made. *See In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991). *See also* 37 C.F.R. § 41.37(c)(1)(vii)(2004).

V. ANALYSIS

Appellants argue that Ito, similar to Grabelsky, does not teach or suggest **“the adjustment of the output bitrate ‘by providing a plurality of bitstreams encoded at different bitrates and selecting one of the plurality of bitstreams based on the computed statistics’”** because “Ito discloses the adjustment of the bitrate of a single bitstream rather than providing a plurality of different bitstreams encoded at different bitrates” (App. Br. 4-5).

We disagree. The claims must be given their broadest reasonable interpretation, and limitations cannot to be read into the claims from the

specification. Appellants' argument that the teachings of Ito differ from the claimed invention because "Ito discloses the adjustment of the bitrate of a single bitstream rather than providing a plurality of different bitstreams encoded at different bitrates" is not commensurate with the invention that is claimed. That is, Appellants appear to be arguing that the claimed invention is providing a plurality of different bit streams *at one time* whereas Ito discloses providing only a single bitstream *at one time*, and thus, such argument is not commensurate with the claimed invention.

The Examiner's position as to Ito disclosing the claimed elements on appeal beginning at page 4 of the Answer and the Examiner's corresponding responsive arguments beginning at page 5 of the Answer appear to us to meet all of the limitations required by independent claim 1 on appeal.

We agree with the Examiner's observations with respect to Grabelsky and Ito disclosing the recited elements of claim 1. Grabelsky discloses collecting network performance statistics from network connections to be used to monitor the overall performance of the underlying network (FF 1-2). Ito discloses providing a plurality of communication data at different (high/low) encoding rate to be distributed to different receiving terminals based on detected congestion (FF 3, 4, and 6). Further, Ito discloses selecting (or discarding) communication data to be distributed to the receiving terminals based on detected congestion, depending on the importance of the communication data (FF 5 and 6). Ito thus discloses providing a plurality of bitstreams, or communication data, at different encoding rates *over time*, and selecting a bitstream/communication data with a particular encoding rate to be distributed to a particular receiving terminal.

One of ordinary skill in the art would have found it obvious to combine the teachings of Grabelsky with those of Ito to obtain the recited element of “providing a plurality of bitstreams encoded at different bitrates and selecting one of the plurality of bitstreams based on the computed statistics”. We conclude that the Appellants have not shown that the Examiner erred in rejecting claim 1 as unpatentable over the teachings of Grabelsky and Ito.

As to the other recited elements of claim 1, Appellants provide no argument to dispute that the Examiner has correctly shown where all these claimed elements appear in the prior art. Thus, we deem those arguments waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

Accordingly, we conclude that the Appellants have not shown that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a). Because claims 2-8 fall with claim 1, we conclude that Appellants have not shown that the Examiner erred in rejecting claims 2-8 under 35 U.S.C. § 103(a).

CONCLUSION OF LAW

(1) Appellants have not shown that the Examiner erred in finding that claims 1-8 are unpatentable over the teachings of Grabelsky and Ito.

(2) Claims 1-8 are not patentable.

DECISION

The Examiner's rejection of claims 1-8 under 35 U.S.C. § 103(a) is affirmed.

AFFIRMED

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